APPENDIX A

Exhibit A

IN THE UNITED STATES COURT OF CLAIMS

No. 309-81C

SANTA FE ENGINEERS, INC.	)	
	)	Government contracts; Contract Disputes Act; transfer to the ASBCA; need for consolidation
v.	)	
	)	
	)	
THE UNITED STATES	)	

Walter A.I. Wilson, attorney of record, for plaintiff. *Robert J. Martinez* and *Kilcullen, Wilson and Kilcullen*, of counsel.

William S. Liebman, with whom was *Assistant Attorney General J. Paul McGrath*, for defendant. *Louis R. Newman* and *Jeffrey H. Schneider*, Department of the Navy, of counsel.

Before DAVIS, NICHOLS and SMITH, *Judges*.

ORDER

Plaintiff Santa Fe Engineers, Inc. appeals under the "direct access" of the Disputes Act of 1978, 41 U.S.C. §§ 601 *et seq*. (Supp III 1979), from an adverse decision of the contracting officer. It seeks an equitable adjustment of $18,260,345 allegedly owing from the United States for additional costs incurred as a result of contract modifications and delays resulting from such changes. Defendant moves for summary judgment and plaintiff opposes.

In 1976, Santa Fe Engineers was awarded a contract by the Navy to build a hospital and related support facilities. The contract included the standard disputes clause. A number of disputes over contract specifications arose during the course of the project, and, pursuant to the disputes clause, claims were filed with the contracting officer. For six of the claims, the contracting officer's final decisions denying an adjustment were made prior to March 1, 1979, the effective date of the Contract Disputes Act. The remaining twelve claims were decided adversely to plaintiff after March 1, 1979. Each of these eighteen claims was appealed to the Armed Services Board of Contract Appeals (ASBCA) and assigned a separate docket number by that board. Upon the request of plaintiff, each was then dismissed without prejudice in anticipation of a future consolidated action of these claims, plus later claims arising under the contract.

On March 17, 1980, plaintiff filed an overall equitable adjustment claim, a so-called "global" claim, which included all of the pending disputes plus new claims based on the impact of the individual disputes. The contracting officer denied, in relevant part, plaintiff's requests in a final decision issued January 1981. On May 5, 1981, plaintiff filed this petition under § 10(a) of the Contract Disputes Act, 41 U.S.C. § 609(a) (Supp. III 1979), seeking direct *de novo* review in this court of that decision, including those claims which are identical to the eighteen claims previously appealed to the ASBCA.

On March 11, 1981, the ASBCA issued a notice reinstating, consolidating and redocketing the original eighteen appeals. On May 6, the board accepted the petition filed in this court as plaintiff's complaint in the consolidated board action. The board appeal has been suspended for six months pending a decision on the jurisdictional questions presented here.

Defendant contends that we lack jurisdiction because, for the eighteen claims repeated in the "global" claim, the original appeal to the ASBCA was a binding election to proceed under the disputes clause and not under the Contract Disputes Act, and, for the novel claims, that plaintiff failed to certify its claims before the contracting officer.

Both parties agree that it would be in the interest of justice to have all of the claims decided in one forum; plaintiff argues for consolidation here and the defendant argues for transfer to the ASBCA.[1] We are generally empowered to take either action by a broad transfer provision of the Contract Disputes Act. 41 U.S.C. § 609(d) (Supp. III 1979).

Without deciding most of the issues proffered to us, we do conclude that the fatal problem for plaintiff is that five[2] of the original claims appealed to the board were decided by the contracting officer prior to March 1, 1979. Those cannot be directly appealed here, even under the consolidation section of the statute. *Warwick Construction, Inc.* v. *United States*, Ct. Cl. No. 85-80C, at 5-6 (order to August 29, 1980); *Roubin & Janeiro, Inc.* v. *United States*, Ct. Cl. No. 396-80C, at 6 (order of March 13, 1981). *See* S. REP. No. 1118, 95th Cong., 2d Sess., *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5235, 5269.

The contracting officer's post-Act decision on the "global" claim cannot be viewed as a reconsideration of those five or six original claims.[3] There is no direct mention of those claims nor any ambiguous language which might be linked to the prior claims. Plaintiff's reference to a general paragraph denying all claims not specifically mentioned is adequately explained as a denial of new claims not explicitly addressed in the "global" decision. This interpretation of the final decision is confirmed by the contracting officer in his affidavit submitted by defendant.

Because it is clear, as both sides agree, that all of the plaintiff's claims should be consolidated and heard together, and

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[1] Defendant contends for transfer as an alternative argument if we find some of the claims to have been properly certified and properly before us on appeal.

[2] It is unclear whether the number of pre-Act claims included in the petition is five or six. The exact number is not material to our decision.

[3] Plaintiff argues that such a reconsideration after March 1, 1979, would allow it to elect to appeal prior decided claims to this court under the Contract Disputes Act. We do not decide that issue because we find that no reconsideration occurred.

because we cannot consolidate in this court the claims decided prior to the Act, we would certainly transfer to the ASBCA all the "direct access" claims now properly in this court if we were called upon to do so. We need not, however, take that course, nor need we decide which (if any) of the claims stated in the petition can properly be brought here under the Disputes Act at this time. The reason is that all of plaintiff's claims are now pending before the ASBCA which has accepted the petition in this case as plaintiff's complaint in the board proceedings. The disputes can all go forward before the ASBCA in that one proceeding.

For this reason, defendant's motion for summary judgment is granted (without oral argument) only to the extent that the petition here is dismissed without prejudice (except that we do determine that we have no jurisdiction over the five or six pre-Act claims discussed above). This disposition makes it unnecessary for us now to consider, and we leave undecided, whether any of plaintiff's claims before the ASBCA properly fall under the Contract Disputes Act (for purposes of interest, certification, subpoena rights, etc.).

BY THE COURT

/s/ Oscar H. Davis

Oscar H. Davis
Judge

June 4, 1982

APPENDIX B

Exhibit B

IN THE UNITED STATES COURT OF CLAIMS

No. 309-81C

SANTA FE ENGINEERS, INC.

v.

THE UNITED STATES

Walter A.I. Wilson, attorney of record, for plaintiff. *Robert J. Martinez* and *Joanne Becker, Kilcullen, Wilson and Kilcullen*, of counsel.

William S. Liebman, with whom was *Assistant Attorney General J. Paul McGrath*, for defendant. *Louis R. Newman* and *Jeffrey H. Schneider*, Department of the Navy, of counsel.

Before DAVIS, NICHOLS, and SMITH, *Judges*.

ORDER

PER CURIAM: Our order of June 4, 1982, in this case dismissed the petition, in part with prejudice and in part without prejudice. We left the case to the ASBCA. Each party moves for reconsideration. Plaintiff seeks an explicit declaration from us that all matters contained in its petition are properly before the ASBCA. Defendant asks precisely the opposite as to major aspects of the case.

We thought our original order said expressly that we left wholly undecided whether any of the plaintiff's claims before

the ASBCA properly fall under the Contract Disputes Act or did not so fall for any reason. In any event, we now say explicitly that we take no position whatever on the Board's jurisdiction over plaintiff's claims or any part of them, either under the Contract Disputes Act or otherwise. Because the Board has before it a replica of plaintiff's petition in this court, the court is of the view that the Board can and should decide whether it has authority to consider any or all of the claims on their merits (under the Contract Disputes Act or pre-Contract Disputes Act law).* All those issues are left wholly to the Board. The petition in this court is dismissed and the motions for reconsideration and clarification are otherwise denied.

IT IS SO ORDERED.

JUL 16, 1982

*Because plaintiff did not properly certify the new parts of its so-called "global claim," plaintiff has no "direct access" to this court on those aspects of that claim under the Contract Disputes Act. *E.g.*, *Paul E. Lehman, Inc.* v. *United States*, 230 Ct. Cl. ____, 673 F.2d 352 (1982).

APPENDIX C

Exhibit C

Section 6 of the Contract Disputes Act of 1978, P.L. 95-563, 92 Stat. 2383, codified at 41 U.S.C. §605, provides as follows:

§ *605. Decision by contracting officer – Contractor claims*

(a) All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties of forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

Review; performance of contract pending appeal

(b) The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter. Nothing in this chapter shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

Amount of claim; certification; notification; time of issuance; presumption

(c)(1) A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000 –

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the agency board of contract appeals to direct a contracting officer to issue a decision in a specified period of time, as determined by the board, in the event of undue delay on the part of any contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

Section 7 of the Act, P.L. 95-563, 92 Stat. 2385, codified at 41 U.S. C. § 606, provides as follows:

> *§ 606. Contractor's right of appeal to board of contract appeals*
>
> Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

Section 10(a)(1), (a)(3) and (d) of the Act, Public Law 95-563, codified at 41 U.S.C. § 609(a)(1), (a)(3) and (d), provides as follows:

> *§ 609. Judicial review of board decisions – Actions in United States Court of Claims, district court actions; time for filing*
>
> (a)(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.
>
> (a)(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.
>
> (d) If two or more suits arising from one contract are filed in the Court of Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the Court of Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

Section 12 of the Act, P.L. 95-563, 92 Stat. 2389, codified at 41 U.S.C. § 611, provides as follows:

§ *611. Interest*

Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a) [41 USCS § 605(a)] from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board. (Nov. 1, 1978, P.L. 95-563, § 12, 92 Stat. 2389.)

Section 16 of the Act, Public Law No. 95-653, set out as a note under 41 U.S.C. § 601, provides as follows:

This act shall apply to contracts entered into 120 days after the date of enactment. Notwithstanding any provision in a contract made before the effective date of this act, the contractor may elect to proceed under this act with respect to any claim pending then before the contracting officer or initiated thereafter.

APPENDIX D

Exhibit D

DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged. *Provided, however*, That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

APPENDIX E

Exhibit E

18 November 1980

Commander, Contracting Officer
Naval Facilities Engineering Command
Department of the Navy
Alexandria, Virginia 22332

Attn: Walter S. Evans, Contracts

Re: Contract N62474-75-C-6276
HOSPITAL and SUPPORT FACILITIES
Replacement FY 1976 MCON
Bremerton, Washington
Santa Fe Engineers, Inc. "Close-Out Claim"
of March 17, 1980

Gentlemen:

In view of our inability to reach a stipulated settlement amount in *Santa Fe Engineers, Inc.* v. *U.S.*, 270-79C, we do not feel it is in the best interest of Santa Fe Engineers to further pursue a negotiated settlement of the so-called "close-out" claim submitted under cover of our letter of March 17, 1980.

Please consider this letter our formal request for a Contracting Officer's final decision on the close-out claim. Due to the long pendency of this matter we believe sixty (60) days to be a reasonable time for your office to be able to render that decision.

We intend to pursue this matter in the United States Court of

Claims under the provisions of the Contract Disputes Act of 1978.

Very truly yours,

HUDSON, CREYKE, KOEHLER, TACK & BIXLER

By: /s/ H. Randall Bixler
H. RANDALL BIXLER

cc: Santa Fe Engineers, Inc.
Brinderson Corporation
Julian Hoffar, Esq.
Atlas Plastering Co.

HRB:sjw

APPENDIX F

Exhibit F

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO

Final Decision 81-7 09 JAN 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Santa Fe Engineers, Inc.
P. O. Box 831
Lancaster, California 93534

Gentlemen:

The Commanding Officer, Western Division, Naval Facilities Engineering Command, has forwarded your "global" claims under Contract N62474-75-C-6276 for hospital and support facilities replacement, Bremerton, Washington.

By letter of 18 November 1980, your Counsel requested a decision of the Contracting Officer on this "global" claim which is also designated as a "close-out" claim. Your "global" claim plus the request for extension of contract time to and including 21 January 1980, has been carefully reviewed and the Contracting Officer makes the following findings:

1. The following adjustments of time and money are found due the contractor on the unilateral change orders listed below:

Change Order P-00071. The contract price is increased $63,878.00 and the time extended 14 calendar days for phase II.

Change Order P-00072. The contract price is increased $51,101.00 and the contract time is extended 18 calendar days for phase II.

Change Order **P-00075**. The contract price is increased an additional $20,348.00 and the contract time is extended 7 calendar days for phase II.

Change Order **P-00076**. The contract price is increased an additional $102,155.00 and the contract time is extended 27 calendar days for phase II.

Change Order **P-00077**. The contract price is increased an additional $25,778 and the contract time is extended 7 calendar days for phase II.

Change Order **P-00079**. The contract price is increased an additional $10,311.00 and the contract time is extended 2 calendar days for phase II.

Change Order **P-00082**. No change in contract price or contract completion time.

Change order **P-00083**. The contract price is increased an additional $24,323.00 and the contract time is extended 7 calendar days for phase II.

Change Order **P-00085**. The contract price is increased an additional $9,729.00 and the contract time is extended 2 calendar days for phase II.

The total price increase for the above listed unilateral change orders is $307,623.00 and the contract time is extended an additional 84 calendar days for phase II.

2. Your contract price is increased for labor escalation in the amount of (See Exhibit 1 Basis of Computation) $181,360.00

3. Your contract price is increased for material escalation in the amount of (See Exhibit 2 Basis of Computation) $ 39,396.00

4. The following miscellaneous work changes are determined as follows:

Additional Work Description		Contract Price Increase
Wiring for 2 clocks in Rm 4317 (COR 315)		$ 500
Battery Alarm for Generator (COR 264)		$ 645
Electrical Circuit for Type E Directory (COR 217)		$ 278
Fuel Oil for Emergency Generator Testing (COR 321)		$ 5,000
Painting of Mechanical Pipes (COR 301)		$ 1,000
Atlas Change Order Additive Adjustments for P-00072 and P-00077 (COR 165 & 220)		$ 1,994
Additional Warehouse Costs in Storing Equipment for the period 9 December 78 – 22 August 79		$ 2,080
	Additive	$11,497
Substitution of finish metal door closer cover plates (561) (COR 314) and 115 door closers	Deductive	($12,296)
TOTAL Net change in Contract Price		$ 799 deductive

5. The following additional specific items of claim are decided by the Contracting Officer as follows:

a. Your claim for replacing cracked quarry tile in the kitchen area is moot because of the bilateral agreement reached in Modification P00074, whereby it was agreed that previous and future requests for equitable adjustments regarding anything associated with tile in the kitchen would be invalid. Irrespective of this agreement, proper installation of the tile was the ultimate responsibility of the contractor through his

quality control representative. Portions of the kitchen quarry were observed to be cracked and the contractor was directed, under the requirements of the General Provisions of the Contract, to remove and replace the cracked tile. The cracked tile which was replaced in the kitchen area has not subsequently recracked.

When the cracked tile in the visitors' entrance was removed, it was observed by the Resident Officer-in-Charge of Construction that the structural slab under the tile was *not* cracked which indicates that the tile cracks were not caused by differential movement in the underlying structural slab as claimed by the contractor. Also, the tile in this visitor entry area has not recracked since replacement.

b. Your claim for re-installation of medical gas compressors on seismic design-sized inertia blocks, and the relocation of peripheral equipment and access stairways associated with the compressor re-installation is denied. Moving the two medical gas compressors was the subject of lengthy negotiations culminating in a change order by which the contractor was compensated for the cost of relocating peripheral equipment and access stairways. The concrete inertia blocks were required to be both designed and constructed by the Contractor in accordance with paragraph IG-4 and IG-5.1.1. and IG-5.1.2 of the specifications. The Contracting Officer determined that the contract clearly requires proper inertia bases and that no entitlement is warranted for the costs associated with the fact that said bases were improperly sized and poured and later had to be removed and replaced with seismic design-sized inertia blocks. Further, the Contractor's own seismic design calculation applied a seismic snubber excursion (movement) assumption which dictated the size inertia block provided.

c. Your claim for correction of the nurse call system is hereby denied. After testing of the nurse call system, in accordance with specification section 16 G-8.2. Several discrepancies in the audio performance requirements of the nurse call consoles were discovered. You were directed to correct this non-conforming condition, under the Contract General Provisions, at no cost to the Government. While you contend

that the plans and specifications do not support the Government's interpretation, your attention is invited to the following contract requirements:

(1) NAVFAC Drawing #6075418(E-143) shows two separate nurse call terminal cabinets (NCTC) and a note on this sheet states: "All stations connected to nurse call NCTC-4A shall also be connected to nurse call NCTC-4C with full function control and operation."

(2) NAVFAC Drawing 60075423(E-148) also shows two separate NCTC and a note on this sheet states: "All stations connected to nurse call NCTC-5A shall also be connected to nurse call NCTC-5B with full function control and operation."

(3) Specification Section 16G-6.3.4.1 states: "Where indicated, master stations shall have full control over stations normally connected to another master station connected so that a call from a station may be answered from either master station."

Since this dual performance of interconnected nurse call stations was a contract requirement, your request for additional compensation to install this feature cannot be allowed. Furthermore, your contention that light annunciation on the consoles is satisfactory, cannot be construed as "full function and operation" since proper sound annunciation is not achieved. Clearly, the design intent of a communications system is to alert a nurse attending a patient that another person is in need of assistance.

d. Your claim for equitable adjustment in the amount of $83,361.00 and a 35-day extension of contract time for structural steel problems encountered during construction is hereby denied based upon the following finding: You contend that both the structural steel and architectural precast concrete (flat and spandrel extension wall panels) were built in accordance with contract plans and specifications, but upon erection of the precast panels they would not fit together without additional rework in the field. Further, you state that the method of attachment of mounting brackets was abnormal, resulting in "impossible" situation of matching bolts with

inserts and the tolerance allowances of various component elements would not allow erection assembly without excessive refitting, requiring additional labor and material beyond original contract requirements.

Your statement that the method of attachment of mounting brackets is "abnormal" is not justified by any supporting evidence. There is no standard precast panel attachment design; each building design varies to some degree. The attachment method called for in the instant case was not unique or untried. The attachment details shown on the plans were obvious and clearly shown on the NAVFAC Drawings 6075105 and 6075106, and should have been duly considered by any erection subcontractor experienced in precast panel erection.

Erection tolerances for structural steel were specified to be in accordance with the American Institute of Steel Construction (AISC) Code of Standard Practices as required by Contract Specification Section 5A-7.5. The AISC overall tolerances, when considered with respect to the exterior dimensions of the hospital, would allow a maximum deviation of approximately +2" to -1" in the length (N-S) on width (E-W).

Erection of precast panels was specified under Specification Section 3C; however, no erection tolerances for the precast panels were called out. Specification Section 3C-8.3 utilizes only general words such as "with sides plumb, and . . . slab ends . . . aligned." It is therefore significant to note that it was never specified that a greater degree of tolerance perfection be obtained in the installed precast panels than required in the steel framework from which it was hung, nor was such a requirement imposed upon the Contractor.

The Government-furnished design was correct and consistent with industry recommendations in existence at that time, and allowed for reasonable adjustment by the Contractor. Since Specification Section 3C-5.2 requires the Contractor to provide all required hardware needed for the erection of precast concrete members, your request for compensation for alleged extra material such as shims is without merit. Further, due to the responsibility of the prime contractor to coordinate the work of his subcontractors, additional labor cost related to

monitoring the work of separate steel and precast erectors cannot be a basis upon which the contract price can be adjusted. Finally, the responsibility for rework cannot be attributed to the Government.

e. Your claim for additional compensation in the amount of $273,567.00 and an extension of contract time of 250 days for Government-caused delays in connection with the fire alarm system is hereby denied based on the following:

Specifications Sections 16J and 16K, paragraph 1, require the Fire Alarm System to operate in conjunction with and become part of Specification Section "Security, Visual Signals and Conduit Systems." The fire alarm system specified and the security system utilize common alarm signal receiving panels, central console, printers, graphic projector and other units necessary for a complete operating system.

Section 16J-3.1 of the specifications requires submittals to include detailed working drawings showing layout and location of all equipment and complete point-to-point wiring diagrams of all equipment. All material and equipment to be used including internal wiring diagrams of equipment required proof of acceptance or listing by the testing laboratory. Sections 16K-7.1 and 9.1 require the Security and Visual Signal System to conform to the Underwriters' Laboratories (UL) Standard.

You failed to provide submittals in compliance with the specifications, and UL listing was obtained eight months after the initial January 1977 submittal and then only after the approval of your variance request. The submittal requirement for section 16J was not substantially completed until 28 April 1978. Delays in completing these systems resulted not only in delays to the usable completion date but in excess of 700 hours of additional Government fire watch by Naval personnel.

f. Your claim for additional compensation in the amount of $63,960.00 and an extension of contract time of 30 calendar days is hereby denied based upon the following:

You claim that Additive Bid 1C (awarded with the basic contract), which added veneer plaster to gypsum wall surfaces

actually led to the deletion of the epoxy liquid glaze coating (LGC) requirement and that flat alkyd paint was required for the ceiling areas.

Specification Section 9J-8 indicates LGC application as a system is independent of and not restricted to gypsum board surfaces. Contract Drawings 6074939 through 6074946, "Room Finish Schedule" provide LGC as the wall finish material in toilet rooms and rooms with similar exposure. Your claim also indicates that veneer plaster on gypsum board surfaces should receive TT-P-30 flat alkyd paint per Specification Section 9J-7.10. To the contrary, this section requires that flat alkyd paint be used on interior plaster and wallboard surfaces except waterproof gypsum board and surfaces scheduled to receive liquid glaze coating.

Your letters Serial 426-8203 of 3 April 1978 and Serial 426-8355 of 18 April 1978 confirm that room finishes will be per schedule and do not constitute a change of the contract requirements.

g. Your claim for additional compensation in the amount of $1,459,502 and an extension of contract time of 120 calendar days is hereby denied based upon the following:

NAVFAC Drawing 6075268 provides typical seismic bracing details for mechanical equipment. This drawing along with Specification Sections 1G and 15A form the contractual basis of the requirement for the contractor to provide adequate lateral support for non-structural equipment against earthquake induced motions. In addition, the Contracting Officer considers that Specification Section 1G is clearly applicable to seismic protection of equipment furnished under Section 15, in accordance with paragraph 1G-1.1 and 15A-8 and note 4 on NAVFAC Drawing 6075268.

Also of importance is the contract requirement of Specification 1G-5.1.2 to select the particular seismic snubber "based upon a complete dynamic analysis furnished by the Contractor and based on the seismic response data provided in Paragraph 5.1.8." Your initial submittals including your variance request

for a combined seismic snubber vibration isolator, did not conform to this requirement for specific dynamic analysis. Later your submittals proposed sizing of snubbers based on a "worst case" analysis which still did not adequately account for the differences in seismic response data provided by Specification Section 1G-5.1.8. Any delays occasioned regarding your submission of incomplete or unsatisfactory submittals are considered to be the responsibility of the contractor.

Your statement that 15A and 1G are contradictory is unsupported by any specific examples. The only incidence of disagreement between these two sections relates to maximum acceleration of equipment of either 3g (Paragraph 1G-5.1.4) or 4g (Paragraph 15A-12.6). Since the 4g requirement is less stringent of the two, the Government agreed to allow the contractor to be guided by this Standard.

The Contracting Officer also finds that the contract time is extended 84 calendar days for additional work set forth herein, and 7 calendar days for weather, making a total of 91 calendar days' extension of time justified for phase II. This results in a total delay of 152 calendar days for which the contractor is responsible at $2,500 per calendar day, making a total of $380,000 in liquidated damages assessed hereunder.

This assessment of liquidated damages is based upon the contractor's delays in performing fire proofing of 120 calendar days and 32 calendar days of contractor's responsibility for late installation of the fire alarm and security alarm system installed for the contractor by compuguard.

In the event that either of these bases of assessment of liquidated damages fails in whole or in part, then assessment of liquidated damages for the same number of calendar days should be attributed to the delay in the installation of critical metal studs on each of the hospital floors for the number of months listed.

Floor	Studs Delay
L-7	5.8 months
L-6	4.7 months
L-5	3.5 months
L-4	3.8 months
L-3	5.8 months
L-2	8 months
L-1	12 months
SL	14.5 months

In summary, the Contracting Officer finds the net sum of $147,580 due the contractor, computed as follows:

Part 1.	$ 307,623
Part 2.	181,360
Part 3.	39,396
Part 4.	(799)
TOTAL	$ 527,580
Less Liquidated Damages	$ 380,000
Net due contractor pursuant to this final decision	$ 147,580

The Contracting Officer finds no other additional money or time due the contractor or its subcontractors and suppliers on any other part of the contractor's claims for interest, errors and omissions in the plans and specifications, extended overhead, labor inefficiencies, Government-caused delays, Government-ordered changes, and further requests for additional contract time for any reason.

By copy of this final decision, the Commanding Officer, Western Division, is requested to issue a change order in conformance herewith.

This is the Final Decision of the Contracting Officer. Decisions on disputed questions of fact and on other questions that are subject to the procedure of the Disputes Clause may be appealed in accordance with the provisions of the Disputes

Clause. If you decide to make such as appeal from this Decision, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer at the address at the head of this letter, Attention: Director, Contracts Division, within 30 days from the date you receive this decision. Such notice should indicate that an appeal is intended and should reference this Decision and identify the contract by number. The Armed Services Board of Contract Appeals is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the Armed Services Board of Contract Appeals are set forth in the Defense Acquisition Regulation, Appendix A, Part Two. You are also advised that under the Contract Disputes Act of 1978, Public Law 95-563 (codified at 41 U.S.C. 601, et. seq.), you may elect to have your appeal processed pursuant to the provisions of that Act.

Very truly yours,

WALTER S. EVANS
Deputy Assistant Commander
For Contracts
By direction of the Commander
Naval Facilities Engineering
Command
Contracting Officer

Exhibits 1 and 2 attached.

APPENDIX G

Exhibit G

97th Congress HOUSE OF REPRESENTATIVES Report
1st Session No. 97-47

CONTRACT DISPUTES ACT

MAY 18, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANIELSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1371]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1371) to amend section 12 of the Contract Disputes Act of 1978, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, lines 1 and 2: Strike "July 1, 1979, and ending on December 31, 1979," and insert "January 1, 1981, and ending on June 30, 1981,".

Page 2, line 8: Strike "rate" and insert "rates".

Page 2, line 10: After "run", insert "and each six month period thereafter".

EXPLANATION OF AMENDMENTS

The committee amendments make two changes to the language of the bill. As introduced the bill would have required the Secretary of the Treasury to fix the rate of interest for contract claims at six month intervals beginning on "July 1, 1979 and

ending on December 31, 1979". This is the language contained in the bill in the 96th Congress as it passed the House. The amendment is to substitute the current six month period, that is the period beginning "January 1, 1981 and ending on June 30, 1981". This was suggested by the General Accounting Office and the letter of that office dated March 3, 1981 is appended to this report.

The second change in the bill is the addition of language to the end of the bill providing that the interest payable on contract claims is to be that fixed for each six month period during which the claim is pending. This makes it clear that the rate to be paid contractors on claims is that effective for the period which includes the date the contracting officer receives the claim and then the rate will change for each six month period during the pendency of claim when a different rate is fixed by the Secretary of the Treasury.

PURPOSE

The purpose of the proposed legislation, as amended, is to amend section 12 of the Contract Disputes Act of 1978 to delete the reference to the Renegotiation Board (which has been abolished) in connection with the interest rates established by the Secretary of the Treasury which apply to contract claims, and to require that the Secretary of the Treasury is to publish each rate in the Federal Register. The new language would require the Secretary of the Treasury to fix interest rates for the six month period beginning January 1, 1981 and for each six month period thereafter. In fixing such rates, the Secretary of the Treasury would be required to take into consideration the current private commercial rates of interest. Interest with respect to each particular claim is to be paid at the rate fixed by the Secretary of the Treasury for the period during which the contracting officer receives the claim and then at the rate applicable for each six month period as fixed by the Secretary during the pendency of that claim.

STATEMENT

In the 96th Congress, the bill H.R. 3909 was introduced in accordance with the recommendations of the Comptroller

General of the United States as contained in the letter to the Honorable Peter W. Rodino, Jr., Chairman of the House Committee on the Judiciary, on April 10, 1979. That letter is set forth at the end of this report. That bill was reported by the Committee on the Judiciary on October 10, 1979 and passed the House on October 15, 1979. However, the Senate did not act on the bill in that Congress. The current bill, H.R. 1371, was introduced in the form that the bill passed the House in the 96th Congress. In his 1979 letter to the Committee, the Comptroller General recommended that the Contract Disputes Act of 1978, Public Law 95-563, which was approved on November 1, 1978, be amended by revising the language of section 12. Section 13 of Public Law 95-563 provides that awards by agency boards of contract appeals and court judgments on claims under the Act are to be paid from the permanent indefinite appropriation established by section 724a of Title 31, U.S. Code. Payments from this appropriation are made upon certification by the Comptroller General. Interest on contract claims is authorized by section 12 of the law which states that interest is to be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board. The 92d Congress law provided that the Secretary of the Treasury was to establish interest rates for the Renegotiation Board. The Comptroller General originally pointed out on April 10, 1979, that since the Renegotiation Board was terminated as of March 31, 1979, it was not clear that the Secretary of the Treasury would be required to continue setting interest rates under Public Law 92-41. For this reason, the Comptroller General recommended an amendment to Section 12 of the Contract Disputes Act. The bill H.R. 1371 provides for a revised requirement that the Secretary of the Treasury will fix and publish interest rates applicable to contract claims.

As has been outlined in the statement of purpose, the revised language requires that the Secretary of the Treasury shall specify the interest rate at six month intervals. It further requires that the Secretary of the Treasury in determining the rate shall take into consideration current private commercial rates of interest for new loans maturing in approximately five years. The Secretary of the Treasury is further required to publish the rates he determines in the Federal Register. As to

particular claims, interest is initially to accrue at the rate fixed under section 12 for the period which includes the date on which the interest begins to run and then the rate fixed by the Secretary for each succeeding six month period is to apply for a claim pending during each such period.

The Comptroller General in his letter to the Chairman of the House Committee on the Judiciary noted that since the amendments in the bill are designed merely to incorporate the existing requirement concerning interest rates in restated language, it closely follows both the concept and the language of section 2(a) of Public Law 92-41, the law relating to the Renegotiation Board. One new element is the requirement that the Secretary of the Treasury publish the rates in the Federal Register. The Comptroller General pointed out that the Renegotiation Board had so published the rates. The committee agrees that the publication of the rates in the Federal Register is desirable and it is logical that the Act be amended to make this the responsibility of the Department of the Secretary of the Treasury who would also be responsible for establishing the rate.

Incident to its consideration of this bill, the committee was advised that there is some question concerning the time that interest begins to run despite the fact that section 12 clearly states that "Interest on amounts due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a) * * *."

When Congress enacted the Contract Disputes Act of 1978, it was understood that submission of a claim in writing to a contracting officer under section 6(a) was the starting point for interest to begin to run on a contract claim. The separate provisions of section 6(c) requiring the "certification" of a claim and its supporting data when the claim is in excess of $50,000 was intended as a condition precedent to payment, but was not a delayed starting point for the interest accruing period. Certain agencies have argued that they have not "received" a claim under the Act until the necessary certification data has been submitted. This is not the correct interpretation. In fact, it

often leads to an unfair result in that a contractor does not have all the necessary supportive data available to satisfy certification procedures, when he initially notifies the agency in writing of a contract claim. It is likewise impossible for the contractor, at this stage of the proceeding, to anticipate what supplemental data might be requested by the contracting officer in the course of consideration of the claim. Certification under section 6(c) should not be viewed as a prerequisite to "receipt" of a claim under section 6(a).

The committee recommends that the bill be enacted. Its provisions assure continuity of the requirement that the Secretary of the Treasury establish the interest rates which are to apply to contract claims and clarifies the application of changes in such rates to pending claims. The enactment of the bill would remove any uncertainty which might exist as the result of the termination of the Renegotiation Board.

Statements under clause 2(1)(3)(A), clause 2(1)(3)(B), clause 2(1)(2)(B), clause 2(1)(3)(D), clause 2(1)(4), and clause 2(1)(3)(C) of rule XI and clause 7(a)(1) of rule XIII of the House of Representatives:

COST

(Rule XIII(7)(a)(1))

Enactment of the bill would result in no added cost. It does not provide for any new specific programs.

OVERSIGHT STATEMENT

(Rule XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility in accordance with rule VI(b) of the Rules of the Committee on the Judiciary with reference to the subject of Government Contracts and Contract Disputes. The favorable consideration of this bill was recommended by that subcommittee has determined that legislation should be enacted as set forth in this bill.

BUDGET STATEMENT

(Rule XI 2(1)(3)(B))

Enactment of the bill would not create any additional cost for the Government pursuant to rule XIII(7)(a)(1). The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by clause 2(1)(3)(B) of rule XI.

COMMITTEE VOTE

(Rule XI 2(1)(2)(B))

On May 13, 1981, the full Committee on the Judiciary approved the bill H.R. 1371 by voice vote.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

INFLATIONARY IMPACT

(Rule XI 2(1)(4))

In compliance with clause 2(1)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(Rule XI 2(1)(3)(C))

The following estimate was received from the Director of the Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 14, 1981.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1371, a bill to amend section 12 of the Contract Disputes Act of 1978, as ordered reported by the House Committee on the Judiciary, May 13, 1981.

The bill provides that the interest rate paid by the Federal Government on successful claims by contractors against the government shall be set by the Secretary of the Treasury, based on current private commercial rates. This amendment is intended to clarify the responsibilities of the Secretary of the Treasury, resulting from the termination of the Renegotiation Board.

It is expected that no additional cost to the government would be incurred as a result of enactment of this legislation.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 95-563

AN ACT To provide for the resolution of claims and disputes relating to Government contracts awarded by executive agencies

* * * * * * *

INTEREST

[Sec. 12. Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a)

from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.]

Sec. 12. Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a) from the contractor until payment thereof. The interest provided for in this section shall be paid at a rate which the Secretary of the Treasury shall specify as applicable to the period beginning on January 1, 1981, and ending on June 30, 1981, and to each six-month period thereafter. Such rate shall be determined by the Secretary of the Treasury, taking into consideration current private commercial rates of interest for new loans maturing in approximately five years. The Secretary of the Treasury shall publish each such rate in the Federal Register. Interest with respect to a particular claim shall be paid at the rate determined pursuant to this section for the period which includes the date on which interest begins to run and each six month period thereafter.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 10, 1979.

B-107871.
Hon. Peter W. Rodino,
Chairman, Committee on the Judiciary,
House of Representatives.

Dear Mr. Chairman: The purpose of this letter is to recommend an amendment to the Contract Disputes Act of 1978, Public Law No. 95-563 (November 1, 1978), 92 Stat. 2383. Section 13 provides that awards by agency boards of contract appeals and court judgments on claims under the Act shall be paid from the permanent indefinite appropriation established by 31 U.S.C. § 724a (1976), as amended. Payment from this appropriation is made upon certification by the Comptroller General. Section 12 authorizes the payment of interest and provides in pertinent part as follows:

"The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant

to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

Pursuant to Public Law No. 92-41, the Secretary of the Treasury has established the interest rate for the period January -June 30, 1979. As you know, however, the Renegotiation Board terminated as of March 31, 1979. Thus, it is questionable whether, after June 30, the Secretary of the Treasury would be required to continue setting interest rates under Public Law No. 92-41.

To resolve this problem, we recommend amending section 12 of the Contract Disputes Act to establish an independent requirement based on the Renegotiation Board legislation. Our proposed amendment is set forth below:

'Sec. 1. Section 12 of the Contract Disputes Act of 1978, 92 Stat. 2389, is amended to read as follows:

'Sec. 12. Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6(a) from the contractor until payment thereof. The interest provided for in this section shall be paid at *a rate which the Secretary of the Treasury shall specify as applicable to the period beginning on July 1, 1979, and ending on December 31, 1979, and to each six-month period thereafter. Such rate shall be determined by the Secretary of the Treasury, taking into consideration current private commercial rates of interest for new loans maturing in approximately five years. The Secretary of the Treasury shall publish each such rate in the Federal Register. Interest with respect to a particular claim shall be paid at the rate determined pursuant to this section for the period which includes the date on which interest begins to run.*' [New material italic.]

"Sec. 2. This Act shall be effective July 1, 1979."

Since our proposed amendment is designed merely to incorporate the existing requirement into the Contract Disputes Act, it closely follows both the concept and the language of section 2(a) of Public Law No. 92-41. The only new element is the requirement to publish the rates in the Federal Register.

Until now, the Treasury Department has not been publishing the rates, but the Renegotiation Board has done so. In our opinion, publication of the rates in the Federal Register is desirable, should continue, and should logically be the responsibility of the office which establishes the rates.

We are aware that legislation has been introduced to extend the life of the Renegotiation Board (*e.g.*, H.R. 2002, 96th Congress). Even if this legislation is enacted, we still believe our proposed amendment is desirable since the history of the Renegotiation Board indicates that the present situation may arise again. Our proposal would assure continuity of the requirement to establish interest rates by divorcing it from the uncertainties of the Renegotiation Board. Should the Board be revived, there would be no confusion since it would be clear that the requirements under Public Law No. 92-41 and section 12 of the Contract Disputes Act are the same.

We are concurrently submitting the same proposal to the Senate Committee on the Judiciary and the Senate Committee on Governmental Affairs.

Sincerely yours.

R.F. KELLER,
Deputy Comptroller General of the United States.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., March 3, 1981.

William P. Shattuck, Esq.,
Counsel, Subcommittee on Administrative Law and Governtal Relations, Committee on the Judiciary, House of Representatives

Dear Mr. Shattuck: In recent telephone discussions with members of our staff, you raised certain questions concerning proposed legislation to amend section 12 of the Contract Disputes Act of 1978. A bill had been introduced in the 96th Congress (H.R. 3909) but action could not be completed prior to adjournment. The bill has been reintroduced in the 97th Congress as H.R. 1371.

Since the termination of the Renegotiation Board in 1979, the Treasury Department has continued to set interest

rates every six months and has published them in the Federal Register. Continuity has thus been maintained.

In its present form, H.R. 1371 retains the starting period specified in the original H.R. 3909—the period "beginning on July 1, 1979, and ending on December 31, 1979" (H.R. 1371, page 2, lines 1 and 2). This should be amended to read "beginning on January 1, 1981, and ending on June 30, 1981."

Please contact us if we can be of any further assistance.

Sincerely yours,

HARRY R. VAN CLEVE,
(For Milton J. Socolar, General Counsel).